

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

CONAGRA FOODS, INC.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No.: 09C-02-170 FSS
	)	<b>E-FILED</b>
LEXINGTON INSURANCE CO.,	)	
	)	
Defendant.	)	

**ORDER**

**Upon Cross-Applications for Certification of an Interlocutory Appeal**

1. The January 21, 2010 order interpreted the insurance policy at the case's core. On one hand, the order holds that Conagra must pay a higher deductible (per-Occurrence Retained Limit), and Lexington's duty to defend has not been triggered. On the other hand, the order denies Lexington's motion for summary judgment on Conagra's "bad faith claim." As to the latter, the court found that discovery might support Conagra's claim that it misled its insured into the reasonable belief that Lexington would defend and cover Conagra's losses.

2. While the January 21, 2010 order is important to both sides and it would be convenient for the parties and this court if the parties' cross-appeals were decided interlocutorily, such an appeal's outcome will not be case-dispositive.

Otherwise, the parties can stipulate to a final judgment and pursue direct appeal(s).

For the foregoing reasons, the court declines to certify any interlocutory appeal from its January 21, 2010 order.

**IT IS SO ORDERED.**

Date: February 4, 2010

/s/ Fred S. Silverman

Judge

cc: Prothonotary (Civil)

pc: John E. James, Esquire

Denise S. Kraft, Esquire